

Exhibit 1

Pages 1 - 24

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 24-0329 CRB
)	
RUTHIA HE, a/k/a RUJIA HE, and)	
DAVID BRODY,)	
)	
Defendants.)	
)	

San Francisco, California
Wednesday, August 21, 2024

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

ISMAIL J. RAMSEY
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: KRISTINA GREEN, ASSISTANT U.S. ATTORNEY

DEPARTMENT OF JUSTICE
1400 New York Avenue, NW - 8th Floor
Washington, D.C. 20005
JACOB FOSTER,
PRINCIPAL ASSISTANT CHIEF

For Defendant Ruthia He:

KEKER & VAN NEST
633 Battery Street
San Francisco CA 94111
BY: CODY J.K. GRAY, ATTORNEY AT LAW
ELLIOT R. PETERS, ATTORNEY AT LAW

Also Present: **VANESSA VARGAS, U.S. PRETRIAL**

Remotely Reported: Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
U.S. District Court - Official Reporter

Wednesday - August 21, 2024

10:46 a.m.

P R O C E E D I N G S

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THE CLERK: Calling criminal action CR24-0329, USA
versus Ruthia He.

Counsel, please state your appearances.

MR. FOSTER: Good morning, Your Honor, Jacob Foster
and Kristina Green on behalf of the United States.

THE COURT: Good morning.

MR. PETERS: Good morning, Your Honor, Elliot Peters,
also appearing with my partners Cody Gray and Nick Marais on
behalf of Ruthia He. She is present in court as are a number
of her family and friends.

THE COURT: Right, good morning.

MR. PETERS: Good morning, Your Honor.

MS. VARGAS: Good morning, Your Honor, vanessa Vargas
with U.S. Pretrial Services.

THE COURT: Thank you for coming.

So this matter is on as an appeal from Judge Hixson's
detention order, and obviously it's a -- under the law, it's a
de novo determination, and the Court has received a great deal
of materials and maybe I can characterize it, at least what my
thoughts are.

There is a wide divergence of views on the issue of --
well, it goes to the issue of flight maybe to some extent

1 dangerousness, but I think the primary issue is one of flight;
2 and the argument that the Government prevailed upon with the
3 magistrate judge is that the Defendant is at high risk for
4 flight; no set of conditions can guarantee her appearance; and,
5 therefore, she ought to be detained.

6 And the justification for the flight finding are a series
7 of events that in the -- in the Government's judgment warrants
8 the inference that she would flee.

9 The Defense analyzes those -- those justifications, those
10 series of events, and takes a very different view stating
11 essentially there are reasonable -- and I think they are saying
12 more than that -- I think they are saying there are actual
13 contrary interpretations that are borne out by the evidence
14 that they feel that they have in connection with it.

15 And clearly, this type of contest between the two parties
16 would require an evidentiary hearing in the Court's view.

17 All right. So looking at the allegations now supporting
18 the inference of flight, there are three that give the Court
19 some concern.

20 And I'm really turning to Mr. Peters on this -- and not in
21 any particular order, one is the access to considerable sums of
22 money, which while she may not have direct -- she -- I mean,
23 Ms. He may not have direct access -- does have access to it
24 through other means.

25 And, by the way, I have no idea whether these statements

1 are true or not; okay. I mean, that's why we have a hearing to
2 make some determination. I don't know.

3 But that's -- that's the Government's argument. There are
4 considerable sums of money that the Government cites to. And,
5 therefore, I think I need to know from the Defense -- I need
6 more information about those sums of money.

7 One, are they -- not to the dollar and cents -- but are
8 they basically correct; that there are literally, I think,
9 millions of dollars to which she would have -- the Defendant
10 would have access to or arrange to have access to? That's
11 number one.

12 Number two, what exactly were the circumstances
13 surrounding the use of a passport, which the Defendant
14 allegedly said was a stolen passport -- was a missing
15 passport -- lost, missing, stolen, whatever it is -- namely,
16 did the Defendant use that passport subsequent to having
17 reported that it was missing or stolen? What were the
18 circumstances surrounding that?

19 Three -- let's see if I remember three -- yes, there is an
20 issue as to really -- in connection with her ties to the
21 Northern District of California, the United States -- in the
22 last five years -- well, the question is: Has she really
23 resided here or has she really resided elsewhere in the sense
24 of where has she spent almost all of her time or most of her
25 time regardless of the reason.

1 Regardless of the reason, whether it be the illness of her
2 brother, whether it be her job requires it -- regardless of the
3 reason, the Government takes the position -- whether correct or
4 not -- that you look at the last, I guess, a long period of
5 time; but I'm only interested in basically the last five years.

6 In the last five years how much time has she spent in the
7 United States versus how much time she has spent elsewhere?

8 She doesn't have a house. I mean, I know that one has
9 been arranged in connection with a bail condition, but she
10 doesn't really, to my understanding, own real property in the
11 United States.

12 I don't know what her ties are really to the United
13 States, but I thought it would be extremely informative if I
14 could get a sense of what is -- what is her conduct, habit,
15 facts of her ties to the United States in the sense of where
16 she has resided. So I need -- I need that information.

17 Now, I have another thing to say because we are not going
18 to have that today. I'm going to set it over for a hearing. I
19 was actually going to set it over for Friday because she is in
20 custody, but I need these questions answered.

21 Another question that I want you to think about -- and
22 only you can think about this, Mr. Peters, you and your brain
23 trust back there -- is one possible condition of a release
24 would be not unlike the conditions that were imposed for
25 Dr. Lynch.

1 That is to say, that there be a protective service paid by
2 the Defendant or by members of her family or by friends or by
3 someone to -- to essentially a house arrest situation which is
4 enforced by an independent agency.

5 If she has those resources -- and I'm not -- in a sense I
6 don't -- I don't care. I mean, I'm not -- I'm not -- I am here
7 to -- if she -- it's my responsibility to see whether a set of
8 circumstances could guarantee or assure her presence. That's
9 the issue.

10 If she has the resources or people are willing to put up
11 the resources or the company is willing to devote the resources
12 or somebody is willing to devote the resources -- my view is
13 she is presumed to be innocent; and she should enjoy that
14 presumption -- and because she has resources, it doesn't mean
15 she shouldn't be able to use them if that's a possibility.

16 And, again, Mr. Peters, I don't want you to answer any of
17 these questions today because I think it is part of a larger
18 mosaic that -- I mean, you can if you wanted to. I'm not
19 muzzling you. I mean, good luck with that.

20 But it is not my intention to put you on the spot. It is
21 actually my intention to get you to -- and both sides
22 basically -- to be prepared to answer these questions in a
23 cohesive way.

24 And if that's possible, fine. If not, also fine. So I
25 was not going to entertain any discussion unless somebody wants

1 to talk and simply set this over for Friday at 11:00.

2 And if you have to return to Washington, you can
3 participate by Zoom; but you have perfectly decent counsel out
4 here that can deal with it or you can stay.

5 **MR. FOSTER:** We do. And I'm perfectly happy to stay
6 in my hometown for a couple of days, Your Honor.

7 **THE COURT:** Okay, great. Well, you can go this
8 afternoon, 12:30, there is a Giants game. They are playing the
9 White Sox, which apparently is the only team they can beat, but
10 you are free to do as you wish.

11 **MR. FOSTER:** It's a beautiful day for baseball.

12 **THE COURT:** Pardon me?

13 **MR. FOSTER:** It's a beautiful day for --

14 **THE COURT:** It's a beautiful day. Go ahead,
15 Mr. Peters.

16 **MR. PETERS:** I could address all of these issues now.
17 I'm wondering what the Court envisions in terms of a -- of a
18 hearing and what the Government envisions.

19 I mean, are they going to call agents to testify about
20 certain facts? I'm just not -- I'm trying to picture what will
21 happen Friday.

22 **THE COURT:** First of all, it is a de novo hearing.

23 **MR. PETERS:** Right.

24 **THE COURT:** Okay. And I think the answer to that
25 is -- is the Government can do whatever they want to do.

1 However, I would ask the Government to tell you what they are
2 going to do, either today or tomorrow morning or something.
3 Today is Wednesday. So, I mean, you can tell them either at
4 the end of today or tomorrow morning so that the -- so that the
5 Defense can prepare.

6 **MR. FOSTER:** Of course, Your Honor.

7 **MR. PETERS:** Your Honor, it may be helpful to sharpen
8 the issues for a little bit for me to respond on these three
9 issues.

10 **THE COURT:** And, by the way, I don't know that these
11 are the only issues. I will tell you there was so much
12 material -- and you see I have been engaged in other frolics
13 and detours with other cases, trying to figure out why I don't
14 have jurisdiction to change a detention hearing -- so I don't
15 know that I have devoted enough time to really understand --
16 and I just got the Government's brief, you know.

17 **MR. FOSTER:** We apologize, Your Honor.

18 **THE COURT:** That's all right. And this is a little
19 bit like a -- not to make light of it, but the positions are so
20 starkly opposed, they are -- that you read one brief and you
21 say, "Oh, you are right." And then you read the next brief and
22 you say, "No. You are right." And the answer -- I don't know
23 what the answer is.

24 So, I don't like "you are right; you are right; you are
25 right." There has got to be some -- the Court has to make some

1 reasoned judgment.

2 Now, it's obvious to me -- I don't know "obvious" may be
3 the wrong word -- there may be people who are providing
4 information to the Government as to what's in the -- what's
5 been disclosed that it may be important to present one way or
6 the other. I do think this is a very significant motion
7 obviously.

8 **MR. PETERS:** It is very important to us to try this
9 case with her not in custody.

10 **THE COURT:** Right. I can understand that. And, by
11 the way, I just want to point out, I'm ready to try it early.
12 I mean, that's always a grand statement. I mean, I will try
13 this case as soon as the Defense is ready to proceed.

14 So if you are telling me you are ready to proceed in
15 60 days, we will try it in 60 days.

16 **MR. PETERS:** I'm not telling you that, Your Honor. We
17 have been focused on bail. I haven't looked at discovery.

18 **THE COURT:** You are not in that position, but I do
19 want you to know that I can appreciate -- I can appreciate the
20 seriousness of the case and your client's situation and -- and
21 it will -- I'm free to try it at the convenience of the
22 parties.

23 **MR. PETERS:** Your Honor, maybe it's a failing of mine
24 that I can't come to court and have -- be asked three questions
25 that I think I can address to Your Honor and not start to

1 address them, and I think it may sharpen whatever happens on
2 Friday if we do.

3 **THE COURT:** Go ahead.

4 **MR. PETERS:** So let's talk about access to money --
5 and this relates a little bit to the third issue you
6 mentioned -- but in 2023, Ms. He bought real estate in Georgia;
7 spent about \$250,000 with another person. Owns real estate in
8 Georgia. Not exactly the kind of thing that a person does, who
9 according to the Government at that point in time, has
10 attempted to and is intending to flee.

11 She also received, here in the United States, a \$400,000
12 dividend from Dunn, the company that she founded in 2023; paid
13 taxes on it and bought at HSBC Bank a fairly stringent
14 certificate of deposit. So -- and that's really the lion's
15 share of the money she has.

16 She has an account in China that she has had for a long
17 time with \$1,400 in it.

18 The Government talks about millions of dollars, and I
19 think on page 18 of their brief they refer to Dunn transferring
20 a million dollars or so to this company called Make Believe in
21 Hong Kong.

22 Make Believe is an agency which hires contractors who work
23 for Dunn. That money was paid by Dunn to hire people in Asia
24 Pacific region who work for the company. It is not Ms. He's
25 money. She doesn't have control of it. She doesn't spend it.

1 So, the idea that she has access to millions of dollars,
2 she doesn't. She -- and the circumstances of the assets that
3 she does have, suggest not a person who is attempting to flee
4 and put money abroad so she can feather some foreign nest.

5 She buys real estate in '23 in Georgia investing in her
6 assets in this country. She has a certificate of deposit at
7 HSBC Bank, which is the post tax \$400,000 dividend.

8 So, the idea, which sort of gets us around -- I'm going to
9 address your last question about the Lynch type condition.

10 We have looked into that because we are obviously familiar
11 with the Lynch case. It's just really, really expensive to do
12 what Lynch did. Cost in the neighborhood, I think, of about
13 \$150,000 a month to do that.

14 And so, having the resources to do it, that said if there
15 is some -- we will move heaven and earth to address the Court's
16 concerns. And if there is conditions that the Court wants us
17 to find some way to do, we will. That's why we have proposed
18 that she live in this rented house in Fremont -- she doesn't
19 own it. Her family doesn't own it -- with her aunt and her
20 mother, who is present in court, came here from China.

21 And her mother and father -- father is still in China but
22 her mother is here in this courtroom -- are prepared to post
23 \$500,000 in cash, which is essentially their life savings. So
24 that if she were to flee, she would be taking her parents'
25 cash, so -- on the first.

1 The second, this idea of the lost passport, that was
2 first -- came to my attention last night when I read the brief.
3 I hadn't seen this document before. It is Exhibit 23 to the
4 Government's brief.

5 And it struck me right off the bat as strange because the
6 suggestion would be that back in 2021 -- before there was a
7 criminal investigation, before anything happened -- that she
8 had somehow fabricated the loss of her passport, which she
9 would have had no motive to do.

10 We have submitted to the Court the document from China
11 about her passport being lost and her getting a replacement
12 passport.

13 So -- and this is something that just may be sharpened for
14 the hearing on Friday -- Exhibit 23 to the Government's brief
15 is this document -- and the Government says in its brief that
16 she presented the old passport when she came into San Francisco
17 on January 3rd of 2023.

18 That's not what that document shows. If you look at that
19 document, it refers to something called the Advanced Passenger
20 Information system.

21 And so what did I do last night? I Googled it: And there
22 is information on Customs and Border Patrol which explains the
23 Advanced Passenger Information system.

24 And the Advanced Passenger Information system requires
25 airlines in foreign cities when passengers are traveling to the

1 United States to be shown a document by each passenger to
2 demonstrate that they have the right to enter the United
3 States.

4 Makes sense. The U.S. Government doesn't want airlines
5 bringing people to the airports in the U.S. who have no right
6 to enter the country.

7 So -- and I don't know exactly what happened here, but I
8 am confident that Ms. He did not use that old passport. Here
9 is what I believe happened -- and maybe we can learn more by
10 Friday because the Government would have access to this
11 information -- the document that she would have had to have
12 shown in Singapore when she got on that plane -- and keep in
13 mind she is coming back voluntarily at a time that the
14 Government is saying she wants to flee. She is getting on a
15 plane in Singapore and flying back to the United States.

16 She would have had to have shown her green card. She had
17 a green card. She got her green card in 2020 as permanent
18 resident alien because she wants to live here.

19 And so she would have shown her green card. Now, I don't
20 know whether under some U.S. Government database or a United
21 Airlines database that green card would have corresponded to
22 her prior passport, and that's why the -- that passport number
23 would have shown up on that document.

24 But if you look at that document, it's clear that it
25 refers to the advanced passenger data, which is the system that

1 I have just described, and that's based not on any access to
2 people from Customs and Border Patrol. It is my reviewing
3 documents online last night from Customs and Border Patrol,
4 which explain this system, and I believe that that's the
5 explanation for how that happened.

6 But hopefully we can learn more about that because when I
7 read that in their briefing -- it had never come up before.
8 Never been raised before in any of the detention hearings. And
9 I saw that document, and I didn't understand it so I started
10 looking at it and trying to figure it out; and that's what I
11 learned.

12 And to the third issue, where she lived in the last five
13 years, she -- except for one year in China during the pandemic
14 when her mother was sick, she has lived here.

15 We can show you where she lived, but she has lived here
16 and she has got her assets here. She recently bought real
17 estate. She doesn't live there in Georgia. We have --

18 **THE COURT:** What I need to know very simply is: There
19 are 365 days a year. Tell me of the 365 times five, how many
20 days she has been here or is there somewhere else. And I don't
21 care where else, and I don't know the reasons.

22 **MR. PETERS:** We will refine that, but basically four
23 out of the five years she has been here. She had to be here
24 until the fall of 2020 when she got her green card. And then
25 she went to China for a year.

1 Since she got back from that trip in January of '23, she
2 has been here. She hasn't left the country.

3 She was going to take a trip in February of '23, and a
4 bunch of agents came to her house and told her not to travel
5 and so she didn't. She gave her passport to Miranda Kane, who
6 was then her lawyer, and Miranda Kane told the Government,
7 "We've got her passport."

8 She hasn't had her passport since then. I have her
9 passport in court today. Thereafter, the Government made a big
10 deal in front of Magistrate Judge Hixson in September of '23
11 she tried to go to Costa Rica.

12 I think they have abandoned that now. I think we have
13 demonstrated that that was just a mistake because San Jose,
14 Costa Rica and San Jose, California have almost the same code
15 if you buy a ticket. And why would she flee to San Jose, Costa
16 Rica? I mean, it just makes no sense.

17 **THE COURT:** Have you ever been to San Jose?

18 **MR. PETERS:** I have actually. I wouldn't flee to San
19 Jose, Costa Rica. Others might. I don't know. But Ms. He was
20 not fleeing. As soon as it was pointed out to her that she had
21 made this mistake in a booking, she said thank you.

22 **THE COURT:** I accept that.

23 **MR. PETERS:** And then the last one is December of last
24 year, her then lawyer Vicki Chou, former AUSA in Los Angeles,
25 said to the Government, "Is it okay if she travels and goes to

1 China?"

2 They said, "We don't want her to travel." She didn't. So
3 she hasn't traveled in 18, 19 months. Hasn't had her passport.
4 We have her passport.

5 So, we can cover the time period; but this whole period of
6 time that the Government says she is attempting to flee or
7 planning to flee, she voluntarily gives up the passport and
8 never leaves the country. I think that's powerful, Your Honor.

9 **THE COURT:** Okay. All right. So there may be other
10 issues that -- did you want to respond to any of this or --

11 **MR. FOSTER:** I'm happy to, Your Honor.

12 **THE COURT:** Go ahead.

13 **MR. FOSTER:** If you would like.

14 **THE COURT:** Sure, go ahead.

15 **MR. FOSTER:** I will be brief.

16 **THE COURT:** Just address the three issues if you will
17 because --

18 **MR. FOSTER:** Yes. Access to money, it is rare that --
19 that you have a plan to prepare for flight that is this brazen
20 and is documented in encrypted communications. And there is a
21 number of exhibits related to that including exhibits about
22 setting up accounts in the names of foreign nominees who would
23 then transfer funds to her.

24 Government records in complete show that through the
25 company that over \$13 million has been transferred to overseas

1 accounts of unknown origin.

2 And we continue to find out about additional information
3 such as just yesterday finding out that a bank had closed one
4 of the company accounts because of suspicion of international
5 money laundering and fraudulent invoices.

6 **THE COURT:** Okay. Are you able to establish that she
7 has any -- that she has access to these accounts?

8 **MR. FOSTER:** Those accounts, not specifically. What
9 she does have access to are the company accounts.

10 And one thing should be made clear. She is the company
11 and the company is her. This is not a company with a board of
12 directors. It's not a company like Hewlett Packard.

13 This is a company that she is in almost complete control
14 of. We know that she has transferred through the company
15 millions of dollars in connections with legal expenses. We
16 know the company accounts recently had over \$10 million in
17 them.

18 We know that we found out after -- there's a lot we are
19 finding out after these two magistrate judges concluded that
20 she should be detained, we found out about this HSBC account
21 with \$400,000 in it, which I think cuts against the previous
22 representations about the modest salary and living on a
23 shoestring budget.

24 She does have foreign bank accounts with some amounts of
25 money in them, and she has access to all of these funds.

1 Second, the passport -- our understanding from CVP -- we
2 will get someone here Friday to explain it to the extent that
3 that is an issue -- but this again goes beyond what both
4 magistrate judges thought was sufficient.

5 Where she spent the time, she spent time in China, over a
6 year and she made false statements -- what multiple witnesses
7 believe to be false statements about the reason that she was
8 staying there; lying because it was the COVID pandemic and she
9 couldn't travel to the United States when those restrictions
10 were not in force.

11 Then she came back briefly for a little over two months
12 and left the country for about a month and then she came back
13 again. And in that time period, the January time period, she
14 is communicating with foreign associates about how she needs to
15 transfer funds to countries without extradition treaties; how
16 she needs to transfer funds to accounts in the names of
17 nominees; how she needs to flee to China in the event that she
18 is arrested.

19 These are communications -- and we have submitted -- I
20 think it's Exhibits 22 and 23, perhaps -- additional
21 communications about this plan for flight that we have found
22 since these magistrate judge proceedings.

23 Now, it is correct that she did stay. She was advised by
24 her lawyers that she might be arrested if she attempted to
25 leave, but we have heard from multiple witnesses that she

1 nonetheless did not consider these proceedings particularly
2 serious because many prominent technology executives had been
3 investigated without being charged criminally.

4 Nonetheless, in this time period she did make -- through
5 Counsel -- false representations to the Government.

6 The Atlanta house, in December it was represented to the
7 Government that she should be allowed to leave the country to
8 China because in her view this investigation wasn't going
9 anywhere. It was languishing. And she now had ties to the
10 United States in the form of property that she was residing in
11 in Atlanta.

12 But, of course, the Government discovered that the day
13 after she had purchased the property, months previous, she had
14 put it up for rent, one day after the purchase and never
15 resided there.

16 Further, during this time period she was opening up bank
17 accounts in nominee names. She got a cellular telephone in the
18 name of a third party. She had no fixed address.

19 And the Government was obtaining multiple ping warrants.
20 She was doing things like using her phone in airplane mode such
21 that AT&T reported that it was off during the time, so it was
22 very difficult to identify her whereabouts as a nomad.

23 And in regards to the time period here, I think the
24 question is given these charges, which are now extremely
25 serious any way you look at it, it has significantly changed

1 the calculus as to flight.

2 And so someone who was making a demonstrated plan for
3 flight previously -- even when she didn't take this very
4 seriously -- now has every motive to flee.

5 And I think to Your Honor's questions about conditions,
6 you referenced Mr. Lynch -- and this is a very light package --
7 but I think even before Mr. Lynch, you referenced Mr. Cohen --
8 and of course me and Mr. Topel were on the other side of
9 that -- and I would say that like Mr. Cohen in Your Honor's
10 view, this Government just can't trust this Defendant.

11 **THE COURT:** Well, wait a minute. I mean --

12 **MR. FOSTER:** She has a history of obstruction.

13 **MR. PETERS:** So --

14 **THE COURT:** You know, I think it's very -- I cite
15 Dr. Lynch because -- because of the arrangement that was worked
16 out, which was entirely satisfactory; and that is an
17 arrangement that the Court can consider.

18 Indeed, you are absolutely right that Mouli Cohen, I had a
19 similar arrangement -- Mr. Lincenberg was counsel in that
20 arrangement -- and it didn't work out too well because he was
21 bribing the guards and trying to figure out a way to shake the
22 tail of the officers.

23 I don't think -- so, I just leave that aside. I mean, I
24 don't -- I don't -- sure, a Defendant has that -- has that
25 opportunity. There always are opportunities.

1 I don't know that -- that -- I don't think it's fair
2 necessarily to take one and say the other.

3 I would have to be convinced if that's a path that -- that
4 we should consider, I would have to be convinced that -- that
5 that condition wouldn't work.

6 I think the burden is on -- in a sense on the Court --
7 maybe on the Government -- to show no set of conditions,
8 reasonable -- that are reasonably ascertainable.

9 And so I'm asking the question, reasonably -- well, I
10 don't know, ascertainable -- that are within the scope of the
11 Defense's ability to provide. You know, you are not going
12 to -- I'm not going to give some condition that nobody can
13 provide -- can satisfy.

14 The question is whether or not -- the first question is
15 can they be provided. That's the first question.

16 I think in a way that's the most extreme -- when I take a
17 look at Dr. Lynch, I thought that was a pretty extreme set of
18 conditions. The reason is that the person had \$400 million and
19 had absolutely no ties to the United States whatsoever; no
20 property, no family and had fought extradition for four years.

21 And so the one thing that was clear is that he didn't want
22 to be here; notwithstanding the fact that he was acquitted.
23 But this is -- you know, that's hindsight perspective.

24 So, I think his case was the most extreme. And yet, those
25 conditions were entirely satisfactory. I mean, he was a person

1 who could arrange private planes without any -- without a
2 moment's notice. So those conditions were satisfactory.

3 I think you have to treat the conditions as they are if
4 there are conditions that the Defense can satisfy.

5 I mean, I really do think that I have to go through a set
6 of conditions. That's a set of conditions that I'm proposing
7 only if they are achievable, and I'm not asking the Defense at
8 this point whether they are achievable or not though on Friday
9 they should be prepared to discuss.

10 **MR. FOSTER:** I agree, Your Honor.

11 **MR. PETERS:** I would ask, Your Honor, that, you know,
12 Counsel makes and has made this morning a bunch of sweeping
13 statements without reference to any specific facts.

14 And with all respect, I believe some of them are
15 inaccurate. The statement about \$13 million transferred, I
16 would like to know what he is talking about because none of
17 that money is Ms. He's.

18 And so, if there are documents that show Dunn or somebody
19 transferred \$13 million, I would like to see the documents. I
20 have never seen them.

21 **THE COURT:** Okay. So let's put down the ground rules
22 for the hearing because I think you are right. I think as to
23 any particular fact that you say mitigates against a release,
24 you know, it -- the basis of that assertion should be in your
25 pleadings or advise Mr. Peters of it or Mr. Cody [sic] or

1 someone advise --

2 **MR. FOSTER:** Of course, Your Honor.

3 **MR. PETERS:** And, you know, that she has complete
4 control of the company, the company is represented by Chris
5 Steskal from Fenwick & West. Counsel knows that. They have an
6 independent board member. Ms. He is not in complete control of
7 the company --

8 **THE COURT:** I don't know.

9 **MR. PETERS:** -- and its assets.

10 **THE COURT:** I don't want to get into this argument.
11 If it's going to be a point, which obviously that's a point, it
12 has to be -- there has to be evidence of it.

13 That's what the evidentiary hearing is all about. So
14 that's what we are going to do on Friday at 11:00 o'clock, and
15 I think --

16 **MR. PETERS:** Could we see the evidence in advance --

17 **THE COURT:** Go talk to --

18 **MR. PETERS:** -- besides 10:30?

19 **MR. FOSTER:** Of course, Your Honor.

20 **THE COURT:** Sit down with him and go through it.
21 Okay.

22 **MR. PETERS:** Thank you, Your Honor.

23 **THE COURT:** All right. And I want to thank everyone
24 for coming. They can come back on Friday or not, but I
25 understand her family is obviously in support of her and so

1 forth.

2 Do you have a condition -- do you have a set of the
3 Dr. Lynch conditions?

4 **MR. PETERS:** We got your order online. It just -- if
5 Ms. He had anything close to the money that Dr. Lynch had, it
6 would be a different thing. Just, \$150,000 a month is really a
7 lot.

8 **THE COURT:** You know what? Of course it's a lot of
9 money, but that's what it costs. I'm not in the negotiation
10 business, and that's what it costs. Some people can afford it
11 and some people can't.

12 I don't know. And it may be that your client cannot
13 afford it and cannot raise the funds to pay for it. If that's
14 the case, that's the case. I mean, that's the case. But, I
15 mean, that obviously is a set of conditions. I'm not saying
16 it's the only set of conditions.

17 **MR. PETERS:** Yep.

18 **THE COURT:** And I'm not saying -- I'm not saying
19 anything except I will see you at Friday at 11:00 o'clock.

20 **MR. PETERS:** And thank you, Your Honor, for taking the
21 time to read all of that stuff, which obviously is quite a lot.

22 **THE COURT:** Yes. Thank you, very much.

23 **MR. PETERS:** We appreciate it. Thank you, Your Honor.

24 **MR. FOSTER:** Thank you, Your Honor.

25 (Proceedings adjourned at 11:22 a.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: August 22, 2024



Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter

Exhibit 2

Pages 1 - 25

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,)

Plaintiff,)

VS.)

NO. 3:24-CR-00329-CRB-1

RUTHIA HE,)

Defendant.)

San Francisco, California

Monday, September 9, 2024

TRANSCRIPT OF PROCEEDINGSAPPEARANCES:

For Plaintiff:

U.S. DEPARTMENT OF JUSTICE

Fraud Section

950 Pennsylvania Avenue, Northwest

Washington, DC 20530

BY: JACOB N. FOSTER, ATTORNEY AT LAW

ISMAIL J. RAMSEY

United States Attorney

450 Golden Gate Avenue

San Francisco, California 94102

BY: JINA CHOI

ASSISTANT UNITED STATES ATTORNEY

For Defendant:

KEKER, VAN NEST & PETERS, LLP

633 Battery Street

San Francisco, CA 94111

BY: NICHOLAS D. MARAIS

CODY J.K. GRAY, ATTORNEY AT LAW

Reported Remotely By: Stephen W. Franklin, RMR, CRR, CPE

Official United States Reporter

Stephen W. Franklin, RMR, CRR, CPE
United States Court Reporter
SFranklinUSDC@aol.com - (561)313-8439

Monday - September 9, 2024

2:04 p.m.

P R O C E E D I N G S

---o0o---

THE COURTROOM DEPUTY: Calling criminal action CR-24-0329, USA versus Ruthia He.

Counsel please step forward and state your appearance for the record.

MR. FOSTER: Good afternoon, Your Honor. Jacob Foster with Jina Choi on behalf of the United States.

MR. MARAIS: Good afternoon, Your Honor. Nick Marais and Cody Gray from Kecker, Van Nest & Peters for defendant Ruthia He, who is present in court and in the custody of the U.S. Marshals.

THE COURT: And there's also an interpreter?

MR. MARAIS: There is, Your Honor, who I believe has been sworn.

THE INTERPRETER: Your Honor, the interpreter's name Yang Shao, a California certified court interpreter. Certificate number is 301244. I was just sworn in by the clerk.

THE COURT: Thank you.

Okay. All right. So the Court has received, again, several filings in connection with this, one as recently as 10 minutes ago, roughly 10 minutes ago, 15 minutes ago.

MR. MARAIS: We filed it at 9:00 this morning, Your

1 Honor, but ...

2 **THE COURT:** Oh, that's the way our technological
3 system works. Okay. Well, be that as it may, I mean, I've
4 read it.

5 So, thank you.

6 Let me tell you what I think the issues are. Because
7 there's a lot of back and forth about this representation or
8 that representation, or what this means and what that means,
9 and what a witness has said, and what a witness has said may be
10 unclear whether the witness understood the exact terms of what
11 went on, some approval of dividends or whatever. And I think
12 all of that, by the way, may have some bearing at some point on
13 the case. May have some bearing on credibility. It's not --
14 I'm not excluding it. But I think that a couple of things have
15 emerged that, well, I think ought to be recognized as guiding
16 principles in connection with the issue of release.

17 Number one, the question -- and the government raises it,
18 and I think I just want to respond to it -- of trust, could I
19 trust the defendant to honor any commitments that the defendant
20 undergoes in connection with bail or release, and the
21 government says, no, the defendant can't be trusted. I think
22 that's absolutely correct. I'm approaching it from the point
23 of view that anything that she says and what she may do are
24 subject to the reality that she presents a substantial risk of
25 flight and she presents a substantial risk of obstruction of

1 the investigation in one form or another.

2 Indeed that's exactly why we're talking about all these
3 things. If she could be trusted, we wouldn't do this. It
4 would be a routine. You know, release on a series of promises,
5 and that's the way it works in 99 percent of the cases. This
6 is the 1 percent.

7 So I'm not, quote, holding it against -- I don't think
8 it's fair to deny bail to somebody who can't be trusted. I
9 don't think that's the test: Can the person be trusted. If
10 that's the test you would have -- you wouldn't have the -- you
11 wouldn't have these proceedings, and I think you wouldn't have
12 other proceedings, because clearly when you're dealing with a
13 case and where the allegations are fraud in which the person is
14 a resident, essentially, a citizen of another country which is
15 nonextraditable, you wouldn't -- it would be an open and shut
16 case.

17 I mean, it would be, well, the person can't be trusted,
18 she committed these offenses, and therefore there's no
19 condition of bail, what would be reasonable to ensure the
20 person's presence, just deny it out of hand.

21 I don't accept that. I look at it from a different point
22 of view. I look at it from given the fact she can't be
23 trusted, are there a set of circumstances, conditions that are
24 reasonable can be imposed and will assure, to the extent
25 possible, her presence. Now, what does that mean in this

1 context? Well, in this context it means that it is that there
2 may be such conditions, and that can address essentially the
3 two criteria that I've identified, flight and obstruction.

4 As to flight, I actually thought that there was agreement,
5 maybe not explicit, but implicit, that if she is guarded by
6 this agency with two guards, in which she is placed in -- in
7 which she is confined to her home except for certain specific
8 tasks -- lawyers, medicine, that -- and that she has
9 surrendered her passport and wears an ankle monitor, that that,
10 from the point of view of flight, is a reasonable condition to
11 ensure her presence.

12 Now, the government takes a position, and maybe they're
13 right, these things don't necessarily work. And I think of
14 course they don't necessarily work, but I think that they have
15 in a number of cases worked, and you would have to tell me why
16 in this particular case it wouldn't work. If you tell me that,
17 I'll consider that reason. But it can't be, well, we can't
18 trust her.

19 Now, I assume that but for whatever restraints we put on
20 her, she'd leave. Okay. Don't have to say anything more on
21 that subject. She's outta here. So the question is: Are
22 these restrictions sufficient. I went from one guard to two,
23 to confinement of eight hours a day to 24 hours. I did certain
24 things at least occurred to me, and I've imposed them in other
25 cases that address that concern.

1 And I'm going to hear from you later, but you have to tell
2 me why it's not going to work, other than, we just don't think
3 it works because the person can cut this or overpower the
4 guards or something like that. If you have some reasons, I
5 need to hear it. But they have to be really addressed to her,
6 her circumstance; why it's not going to work in her
7 circumstance.

8 Okay. Now, let me get to the second part, and I'll get to
9 the third in a minute. The second part is the obstruction.
10 And it seems to me that the conditions -- and again, the
11 government comes back and says these are inadequate. Well,
12 okay. I don't know. You know, first of all, interpretive
13 technology. I'm regrettably quite behind the curve, so I
14 really do need to rely on ...

15 And the government says, well, look what you did in the
16 *Mouli Cohen* case. Fine, I'm willing to do it in this case. If
17 there's a condition that I imposed in the *Mouli Cohen* case the
18 defense doesn't think is a reasonable condition, they can tell
19 me.

20 On the other hand, if you want to augment that condition
21 for something else, we can do that. Technology has changed,
22 you know, in terms of WhatsApp and da, da, da, da, da. I
23 understand that there are things that may be more, quote,
24 current to address that particular task.

25 The third prong is what I call the incentive prong. And

1 the incentive prong is how much money should be posted so that
2 if she does flee or if she's considering fleeing, she realizes
3 that financially it's going to impact such and such a thing.
4 So the government says, look, 500,000 in cash, even if it is a
5 \$5 million bond, isn't -- and even if she posts her shares
6 isn't going to -- isn't sufficient, because I guess what
7 they're really saying is that even if you post her shares,
8 there's no guarantee that when the day comes, there will be
9 \$5 million-worth of stock. I guess that's what maybe the stock
10 would be worth that.

11 So I ask the government now -- or not immediately, but I
12 think what they have to do is look at the cash portion of what
13 she's putting up. And, in other words, maybe it ought to be a
14 million dollars of cash or some other sum. And I was curious
15 as to whether the government has an opinion as to the
16 penalties, financial penalties, that could be imposed if she is
17 found guilty of a crime, or crimes. In other words, what is
18 really at risk here financially, even from the government's
19 point of view.

20 So that's an analysis. But now I think there's a logical
21 nexus between the money that's being posted and the harm that
22 she's avoiding, and if it turns out like, okay, it should be
23 2 million, or a million, or 500,000 or something, then it's as
24 if -- it becomes a -- not exactly a zero sum game, but it comes
25 that the government then is repaid or receives, in a sense, the

1 benefit of their conviction, save except for no conviction.

2 And I'm not suggesting they're in parity, I'm just simply
3 saying that's a way to look at it from the government's point
4 of view, from the Court's point of view.

5 So those are sort of three things that I think are in play
6 here. I don't think it's helpful, to go back to the theme of a
7 dispute over the facts. Look, of course there's a dispute over
8 the facts, and I'm not sitting here trying to figure out who's
9 right and who's wrong on the facts. I think, in candor, the
10 government has produced enough unambiguous evidence to
11 demonstrate that she is both a severe flight risk and that she
12 would take efforts to obstruct the investigation. That's all I
13 have to find. I don't have to find anything else; that's
14 enough.

15 I say, okay, given those two things, what can be done
16 about it? Because she is entitled to bail if there is or are
17 sets of conditions that would address those problems. That is
18 the analysis, not anything else. Not a presumption she's
19 guilty or not; it's a controlled substance, blah, blah; it's
20 presumed this way and that way. I got all that. But I also am
21 guided in principle by the fact that she is presumed to be
22 innocent, and that she's entitled to that presumption, and that
23 presumption would allow her to be free pending a conviction by
24 the jury, and that -- so that's where it starts, and then it
25 becomes more complicated by the exceptions.

1 But the exceptions aren't -- the exceptions would be
2 exceptions, but they're not -- it's not the end of the inquiry
3 is what I'm suggesting.

4 Okay. Now, after saying all that, I'm more than pleased
5 to discuss any of these points with counsel. I think what I'm
6 going to do, or what you're going to do, is you're going to
7 either sit down and have a joint conference or not and come up
8 with, quote, a -- see, the government, in a way, doesn't -- and
9 I got it -- doesn't want to come up with a set of conditions,
10 because they think that in doing so -- and I'm not suggesting
11 bad faith, but in doing so, that they are compromising their
12 position that there is no set of conditions. Well, I would
13 disagree with you. I think there's got to be some set of
14 conditions. Now, whether they're reasonable or not, whether
15 they're doable or not, I don't know. And that's why I'm really
16 turning to the government to flesh it out without compromising
17 your position, and that in your view there are no conditions
18 that would satisfy this.

19 **MR. FOSTER:** Yes. Of course, Your Honor.

20 And I think we've engaged in good faith with the defense.
21 We've had a series of calls bordering on an hour from the time
22 these proceedings have been initiated with the purpose of
23 narrowing the issues in dispute for the Court, so if it must,
24 it can reach a decision on whether there are no set of
25 conditions or whether there are some that would permit the

1 defendant's release. So I'm happy to address some of the
2 questions the Court had and its observations, which I think
3 were apt, or discuss further with defense counsel.

4 **THE COURT:** Well, I think nothing is harmed by taking
5 this opportunity to have a discussion. I mean, unless somebody
6 want -- unless you think it ought to be just done between the
7 two groups. I don't know. I mean, I've expressed a view as to
8 why the -- ought to be included, and maybe your time is better
9 spent not telling me what it is. But I'm here to answer any
10 questions, or if you have any positions that you want to be
11 articulated, I'm here then, and I'll be here tomorrow, and I'll
12 be here the next day, I'll be here the day after the next day.

13 So it's -- you know, it's in an effort to come to an
14 answer to this question. I think both sides are entitled to an
15 answer to this question. I don't know how -- I think the
16 answer to the question of when to proceed to trial may, in
17 large part, depend on whether the defendant is at liberty
18 during these proceedings. So I'm not going to try to press the
19 defense on give me a date, that sort of stuff, because it
20 doesn't -- and I know the government has taken the position,
21 and I appreciate it, that you'll go to trial as soon as
22 possible. In other words, it's not your desire to keep her
23 locked up.

24 **MR. FOSTER:** Correct.

25 **THE COURT:** It's your desire to go to trial, I got

1 that. I think that's fine, and what you have said is totally
2 consistent with that.

3 **MR. FOSTER:** Yes, Your Honor.

4 Well, let me provide a couple brief observations, and
5 there might be a couple of issues where there's been divergence
6 in the party on sort of narrowing the gap in the conditions
7 where the Court's views may be helpful.

8 But in response to your direct question about financial
9 penalties, the indictment charges the defendant with a
10 conspiracy to commit healthcare fraud and alleges the
11 submission of over \$14 million in claims. So that would be, at
12 a minimum, the amount applicable for restitution and forfeiture
13 to those insurance plans.

14 Going back to where you've started. I agree with Your
15 Honor that it is an overgeneralization to say it's solely about
16 trust for the reasons that you mentioned. What the government
17 believes distinguishes this case from a run of the mill fraud
18 case or even egregious fraud cases are the quantum of evidence
19 in particular in regards to obstruction.

20 And Your Honor made the observation that you would put in
21 place the types of conditions at issue in the *Mouli Cohen* case,
22 and we think that that is a substantial improvement on the
23 conditions that have been proposed, and they ameliorate some of
24 the concerns.

25 That said, there are a number of other courts, not as to

1 flight as Your Honor as observed, but in particular focused on
2 obstruction -- the *Guo* case in the Southern District of New
3 York and the earlier *Orena* case in the Second Circuit, where
4 courts have rejected these types of proposals in cases of
5 obstruction, because the replicating of prison-like conditions
6 in a context inside a home for a defendant, where the question
7 is not just trust as to the underlying offenses but the types
8 of evidence of obstruction and flight we submit are unusual
9 here, that those conditions do not reasonably prevent both
10 obstruction and dangerousness. And we are in a situation
11 slightly different here from the normal presumption to be free
12 here, where the presumption is to be detained in this case.

13 As to the incentive prong. This is something that we've
14 repeatedly talked to with the defense about, and in our view
15 the current proposal is actually weaker than what's been
16 proposed to us in meet and confer discussions. One of the
17 aspects of the meet and confer discussions was a proposal that
18 there be a prong to satisfy the Court as to the Make Believe
19 payments. And as these proceedings have gone on, what appears
20 is the representations that this -- funds were transferred to
21 Make Believe were bone fide and legitimate, and records would
22 be provided and assurances would be provided before she was
23 released on bond is no longer part of the condition.

24 And, in fact, what the government has discovered, it
25 appears the defendant set up this company, was involved through

1 her own company in setting it up. It's controlled by the
2 individuals who are running Done now. And so the government
3 has serious concerns that directly or indirectly the defendant
4 is influencing the operations of the company in a way that is
5 distributing illegal narcotics today.

6 And so in the context of our meet and confer discussions I
7 believe there's a divergence, and we pointed this out in our
8 papers where we raised concerns about the defendant's formal
9 control over Done. The Court was told you didn't need to worry
10 about that, because there's an independent board member. That
11 person said there was never a board meeting. He never had any
12 control of the company. He's now resigned. And that, in fact,
13 he put forth proposals after she was arrested for her to give
14 up formal control. She hasn't done that, which bears on the
15 risks and the adequacy of conditions if she's out on release,
16 because she controls the companies and its finances and its
17 assets and its policies.

18 And as to indirect control, she's been here when
19 representations have been made around that. And the Court, I
20 think you've observed, may not have the authority to order a
21 change in the corporate practices, but certainly the Court can
22 be unconvinced that the danger to the community and obstruction
23 is ameliorated or sufficiently protected when the company is in
24 the hands of individuals who advised her to flee the country,
25 transfer the assets to foreign jurisdictions, offered to open

1 up accounts in nominee names and did, in fact, open up a
2 company called Make Believe Asia and engaged in financial
3 transfers which led a financial institution, we know, to shut
4 down the account on suspicion of money laundering.

5 And Your Honor was told that all the records were that
6 those payments were legitimate, that they were having
7 difficulty getting them. And, in fact, the government
8 discovers that one of the owners, the only owner of the Make
9 Believe company, is Haley Zou, who's one of the five people
10 giving direction to company counsel and individual counsel.

11 As to the secured bond amount in terms of the losses, but
12 also in terms of the assets available to the defendant, which
13 are, you know, approaching \$10 million, including her own
14 assets and company assets, it would be in the millions of
15 dollars, in the multiple millions of dollars, surely. We also
16 see things like there was a financial statement provided to
17 this Court that showed her having only about \$1700 in one
18 foreign bank account. The government recently discovered that
19 that wasn't forthright. The only reason it's down to \$1700 is
20 that after her arrest, she transferred money to her mom.

21 So *Nebbia* conditions certainly would be a part of the
22 package that the government envisions. And also the defendant
23 has no skin in the game in this current package as she's
24 representing it. And also we've been told at various times of
25 many cosigners for this bond. It appears that right now the

1 defendant is the only one.

2 So those are among the concerns that we have. But I think
3 that a major unresolved issue between the parties relates to
4 the threat of dangerousness and obstruction, and that's been
5 where there have been proposals both by the government, not
6 that we would agree to her release, but maybe it would be
7 helpful in narrowing the issues in dispute for Your Honor, and
8 also proposals by the defense that would be helpful to us,
9 because we just simply don't have access to all these records
10 overseas.

11 We have a first subpoena production which the company
12 represented was complete, where we know definitively through
13 third parties that it did not produce a whole swath of
14 evidence, including communications that occurred on the
15 WhatsApp, and that's hindered the government's investigation
16 and proof in this case. And we have an outstanding subpoena
17 for a later time period beginning in January 2023, where the
18 government hasn't received a response yet besides medical
19 records. It's received no communications. And we've been told
20 that, through third parties, that this China team that the
21 defendant set up, the government submits was for the purposes
22 of obstructing the investigation, communicates solely on
23 WeChat.

24 I haven't received any WeChat records for the first
25 subpoena or the current subpoena.

1 So the defendant, if released, would be able to control,
2 directly or indirectly, the response, and the government's
3 investigation in this case, Your Honor, continues.

4 So I think that we are happy to engage further on the
5 types of conditions, and I think as to protocols for private
6 security, that's something that we think the parties should be
7 able to agree upon but did want to provide those observations,
8 as there are some issues that I think perhaps philosophically
9 would benefit from the Court's intervention.

10 **MR. MARAIS:** Your Honor, this is a good example of
11 how the meet and confer discussion has gone. I asked many of
12 the questions that the Court has asked today of Mr. Foster when
13 we spoke last Friday. And as today, rather than respond to
14 those questions about whether there are weaknesses in the
15 security proposal or what dollar amount would be appropriate
16 for the bond, Mr. Foster has continued to press his factual
17 allegations of the case. Now, I'm happy to respond to those.
18 I have the strong impression the Court would rather that I do
19 not.

20 When Mr. Foster says Scott Koe (phonetic) recalls no board
21 meetings, had nothing to do with the dividend that was paid
22 out. And I have board minutes signed by Mr. Koe and approving
23 the dividend. We're not going to agree about the government's
24 factual allegations.

25 I understand the Court to be saying that for purposes of

1 this hearing you are assuming that the defendant cannot be
2 trusted. I would be remiss if I didn't say that, as we said
3 before, for almost two years between when this company received
4 a subpoena from the United States government and when Ms. He
5 was arrested in June, she followed the rules that were conveyed
6 to her. She surrendered her passport. She asked if she could
7 leave the country to go visit family, the government said no,
8 she didn't leave the country. Had she been asked to
9 voluntarily surrender in June, she would have done it. There
10 is no court order, no requirement of Ms. He that she has failed
11 to comply with.

12 So when Mr. Foster talks about the *Guo* case, there is a
13 defendant who, in SDNY, was found to have disobeyed explicit
14 court orders, who had a private jet, who had a yacht, and the
15 Court was concerned that he might flee. We're not in that
16 situation. Ms. He has followed the rules. She has not tried
17 to leave the country in the two-year period between when she
18 was aware of this investigation and when she was arrested.

19 I also want to address one other general point, and then
20 I'll turn to the specific conditions. And that is this idea
21 that Ms. He has no ties to the bay area, which the government
22 has said before and said again in this brief, which personally
23 I find offensive. Ms. He move here in 2012 to go to graduate
24 school. She has lived in the United States since then. She
25 has worked at a number of well-known companies in the bay area

1 in that time. She applied for a green card.

2 When we were first before Your Honor you asked what
3 percentage of time, what physical presence component in the
4 United States? So we did the math, and over the last 10 years
5 Ms. He has been in the U.S. 86 percent of the time. I ran my
6 numbers this weekend. My number is 90 percent of the time. So
7 we're neck and neck, Your Honor. And having gone through this
8 process, I don't think anybody at the government would say that
9 I have no ties to the bay area, and I don't think it's
10 appropriate to say that in Ms. He's case. She has lived here,
11 she has worked here professionally, she has built her career
12 here, and she has started this company here in the bay area.

13 So I'm not pushing back on Your Honor's determination that
14 there are flight risks, that there are connections in other
15 countries, but I do think it is -- it's wrong to say that
16 Ms. He does not have ties to the bay area.

17 I'm happy to address the three conditions that you've
18 raised. Originally when we were first here, I think the number
19 we proposed was a \$600,000 bond secured by \$500,000 in cash.
20 We have now increased the face value of that bond almost
21 tenfold to \$5 million. And in addition to the cash component,
22 we have proposed that Ms. He pledge her shares in the company,
23 all of them, and that they would be forfeited if she left the
24 United States or failed to appear for a court hearing. She
25 would give up the company that she built and has spent four

1 years working on here in California.

2 So it is a significantly increased proposal from the last
3 time we were here. When Mr. Foster and I spoke, I asked him if
4 there was a dollar amount north of 500,000 for the secured
5 component that would satisfy the government, and he didn't have
6 a response to that.

7 Ms. He has access to about \$600,000 in liquid assets.
8 There's no real dispute about that between the parties. Her
9 parents have offered to pledge \$500,000, as their lifetime
10 savings, to have what Mr. Foster has referred to as skin in the
11 game. So between those two pools of money, we're looking at
12 about a million dollars. If there is a number between \$500,000
13 and a million that the Court thinks is appropriate that would
14 still allow Ms. He to live a little while she's out and
15 awaiting trial, we're comfortable with that. But the idea that
16 that bond needs to be north of a million because in
17 Mr. Foster's view she has unfettered access to \$9 million in
18 corporate accounts is inappropriate.

19 And, again, the only evidence that they pointed to is the
20 claim that Mr. Koe said he had nothing to do with the
21 dividends, that's simply inaccurate. Ms. He can't pledge the
22 money that is sitting in the company's bank accounts, but what
23 she can do and what she's agreed to do is pledge all of her
24 stocks in that company, so that if she failed to appear, that
25 would be the end of the road for her, we're done.

1 The second question, the Court has asked us about
2 technology. Again, I floated this proposal when I spoke to
3 Mr. Foster. We have suggested that she have a very basic
4 phone, a landline, a dumb flip phone that would allow her to
5 communicate with people so that she can live her life. And in
6 addition to that, a computer that would have set restrictions
7 in place and would be monitored by Pretrial Services.

8 She needs to be able to communicate with us. We have
9 proposed that she have access to e-mail, that she be able to do
10 Zoom calls, so that she doesn't have to travel into the city
11 with her security detail. So she needs access to those sorts
12 of tools.

13 When I spoke to Pretrial Services, they said that's fine
14 and that's standard, and they can monitor everything she does
15 on the computer with certain instructions to make sure that she
16 isn't doing whatever it is the Court prohibits. She would not
17 have access to any of the ephemeral messaging systems that
18 we've been talking about, like WhatsApp, or Telegram or Signal.

19 To be clear, I dispute the government's allegations about
20 obstruction, but I'm happy for purposes of this conversation to
21 assume, as the Court has suggested, that that's the world we're
22 in. She would not have access to those apps, and her use of
23 the computer to communicate with us, to communicate with
24 friends and family, would be controlled and monitored.

25 I confess I'm not familiar with the conditions from *Mouli*

1 *Cohen's* case, but I'm happy to discuss those with the Court or
2 with Mr. Foster.

3 On the armed guards. Consistent with the Court's
4 directions last week, we have proposed increasing that from one
5 armed guard to two armed guards. They would monitor her 24/7.
6 They would presumably have access to any GPS information about
7 her. We have proposed a company, Rescor, that was recommended
8 by Mike Lynch's folks. We would not be opposed to using the
9 same team that Mike Lynch used to comply with this Court's
10 orders if that assuages the government's concerns. But these
11 are professional outfits who have extensive experience guarding
12 high-tech executives and you name it. So I truly do believe
13 that they are up to the task that the Court has in mind.

14 I think that covers the three buckets that the Court has
15 identified. I am happy to continue the conversation with
16 Mr. Foster, but I think we would all benefit from some guidance
17 from the Court and --

18 **THE COURT:** Well, I think the guidance from the Court
19 actually comes in the form of how do you -- how do we get to
20 "yes," how do we get an agreement. I think the way to get to
21 an agreement is that the government come up with a set of
22 proposed conditions, as detailed as possible, as detailed as
23 they want to make it be. They give them to you, you look at
24 them and respond, and then to points that you're able to
25 discuss and to ameliorate, you know, to address perhaps in a

1 different way, or accept their condition, that's fine. Today
2 there are still points where I'm sorry we can't agree and you
3 give us -- we have a reasonable position, then you bring that
4 to me. And that's my job, and I'm pleased to do it.

5 So my question is: How much time do you need for this
6 process? I mean, you have the *Mouli Cohen* -- I can -- here,
7 will you give this to -- here we are. Give this to Mr. Marais.
8 These are the conditions in the *Mouli Cohen* case.

9 **MR. MARAIS:** That is a lengthy document, Your Honor.

10 **THE COURT:** Well, it has a -- it has a description of
11 the protective service.

12 **MR. MARAIS:** Okay.

13 **THE COURT:** So forth. I mean, I don't think it --
14 yeah, it's not that it's -- it is what it is. Now, of course,
15 it didn't work.

16 **MR. FOSTER:** I remember, Your Honor.

17 **THE COURT:** For the very reason that the government
18 thought it wouldn't work.

19 **MR. FOSTER:** Yes.

20 **THE COURT:** At any rate, but that's beside the point.
21 I mean, I think -- I think I'm not -- I don't know that I
22 necessarily take my experiences and say, well, it will work or
23 it won't work. Yeah, to some extent it affects my way of
24 looking at things. But I think there is an ironclad -- there
25 are rules out there, you know, set by the circuit as to how to

1 approach the problem. I have to follow the rules, like we all
2 have to follow the rules. That's fine. You give structure in
3 any particular case, and it assures a defendant of the fairness
4 of the inquiry and the determination. And that's important,
5 very important in any case.

6 So what do you want to do in terms of -- in terms of
7 timing? Do you ...

8 What it is, it's going to be a two- or three-step process.
9 I would like the government to be able to furnish by tomorrow
10 morning a set of conditions. I don't know, I'll say 9:00, or
11 10:00 or 11:00 o'clock to the defense. I think the defense can
12 act pretty quickly on that in terms of any counterproposal.
13 Give you 24 -- you respond by Wednesday morning. And then I
14 was going to suggest that if there are differences, I'll come
15 in Thursday afternoon.

16 Does that sound reasonable?

17 **MR. FOSTER:** It does, Your Honor.

18 **THE COURT:** Thursday at 2:00.

19 **MR. MARAIS:** That's fine, Your Honor.

20 I was going to raise the timing issue that the Court has
21 raised, simply because my client has been in custody for 90
22 days now, and I would like to keep this moving.

23 **THE COURT:** Yeah. Well, it will -- yeah, I think
24 that's right.

25 **MR. FOSTER:** Of course.

1 **MR. MARAIS:** Yeah, I think that's fine, Your Honor.
2 We can work with Mr. Foster on this. I suspect if there are
3 differences, it may help the Court to know what those are in
4 advance of the hearing, and we can find a way to file
5 something.

6 **THE COURT:** You can file it, you know. Just send me
7 an e-mail. However you want to do it, that's fine.

8 **MR. FOSTER:** Okay.

9 **MR. MARAIS:** Okay.

10 **THE COURT:** Yeah. And then we can work our way
11 through it.

12 **MR. FOSTER:** Thank you, Your Honor.

13 **THE COURT:** Because hopefully, I'm hopeful that by
14 Thursday afternoon we'll have laid out the conditions, and then
15 that gives the parties the time to work on them in terms of
16 fulfillment of the conditions, which will probably take some
17 period of time.

18 **MR. MARAIS:** Right. We'll have to obviously
19 implement a security protocol and so on. That's another delay
20 I had my eye on.

21 Okay.

22 **MR. FOSTER:** Yes, Your Honor.

23 Thank you.

24 **THE COURT:** Okay?

25 **MR. FOSTER:** Yes, Your Honor.

1 **THE COURT:** All right. Thank you very much. Thank
2 you for coming in.

3 (Proceedings concluded at 2:42 p.m.)

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5 **CERTIFICATE OF REPORTER**

6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

8 DATE: Wednesday, September 11, 2024

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12 Stephen W. Franklin, RMR, CRR, CPE
13 Official Reporter, U.S. District Court
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